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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
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BOSTON, MASSACHUSETTS 02109-3912

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September 12, 2011

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

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RE: New England Transrail, LLC, FD-34797

Dear Members of the Board:

We write to the Surface Transportation Board ("Board") on behalf of the United States Environmental Protection Agency ("EPA"). EPA is overseeing a study of environmental conditions at the Olin Chemical Superfund Site ("Site") under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). In its May 24, 2011 decision in this matter, the Board directed New England Transrail ("NET") to file a status report, and NET did so on August 23, 2011. This letter constitutes EPA's position with regard to NET's August 23, 2011 status report.

Appended to NET's status report is an August 11, 2011 Site investigation update provided by Olin Corporation (the owner of the Site and the party performing the Site investigation under EPA oversight). While this update accurately describes the progress to date of the Site investigation, EPA's position remains that the stated conclusions in NET's status report are premature and may not be supported by the facts as known to EPA. As further described in EPA's September 9, 2010 reply to NET's August 23, 2010 status update on this matter (attached as Exhibit A), the conclusions drawn in NET's 2010 and 2011 status reports are premature because EPA remains in the Site investigation phase of the Remedial Investigation and Feasibility Study ("RI/FS") process. While a significant amount of field data has been collected, a preliminary evaluation of this data with regard to nature and extent of contamination and a preliminary assessment of human health and ecological risks were just submitted by Olin Corporation on August 22, 2011, and have yet to be reviewed by EPA. By law, EPA is required to publish draft RI/FS reports and subject these reports to public comment; only after EPA responds to any public comment is the RI/FS process considered final. Completion of the RI/FS process is necessary in order for EPA to make informed decisions regarding the safe reuse of the Site property. NET's proposal includes physical changes to the Site that, if implemented now, could circumvent or further inhibit this statutory process. Based on the current pace of the Site investigation activities, we continue to expect to finalize RI/FS reports for the relevant part of the Site in 2012. The current schedule, however, may continue to be modified as the investigation proceeds.

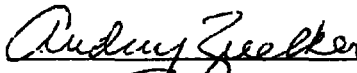
In its May 24, 2011 decision in this matter, the Board noted that before it could address NET's petition, EPA would need to complete its environmental investigation and study, and the Board


would need to complete its own environmental review, and that the Board will continue to defer its environmental analyses and decision on the petition until relevant reports have been issued by the EPA (p. 2). As detailed above, EPA has not issued an RI or FS report; in fact, the Site investigation is still being performed (under EPA oversight) by Olin Corporation.

While EPA's understanding of conditions at the Site has progressed, we are still in the Site investigation phase of the RI/FS. EPA reiterates its request that the Board continue to defer environmental analysis until the relevant RI/FS reports have been issued and finalized through the public review and comment process described above. EPA also repeats its request (see EPA's letters of September 9, 2010 and May 11, 2006 attached as Exhibits A and B respectively) that at the appropriate time, the STB's Section of Environmental Analysis ("SEA") undertake an environmental impact statement rather than an environmental assessment, in light of the extensive excavations proposed and the known environmental issues at the Site.

We appreciate your consideration of this letter, as well as our letters of May 11, 2006 and September 9, 2010, and hope that these submissions are useful to SEA. Should the Board's environmental staff wish to discuss this matter, they should feel free to contact Jim DiLorenzo, EPA's remedial project manager for the Olin Site (dilorenzo.jim@epa.gov or 617-918-1247).

Respectfully Submitted,


Audrey Zucker, Chief
Superfund Legal Office
Office of Environmental Stewardship


Robert Cianciarullo, Chief
Massachusetts Superfund Program
Office of Site Remediation and Restoration

Attachments:

Exhibit A
Exhibit B

cc: Phillis Johnson-Ball, Section of Environmental Analysis
John F. McHugh, counsel to NET
Jim DiLorenzo, EPA
Kevin Pechulis, EPA
James Cashwell, Olin Corporation
Joseph Coyne, Massachusetts Department of Environmental Protection
William Pardee, Massachusetts Attorney General's Office

EXHIBIT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3001

September 9, 2010

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, D.C. 20423-0001

RE: New England Transrail, LLC, FD-34797

Dear Members of the Board:

We write to the Surface Transportation Board ("Board") on behalf of the United States Environmental Protection Agency ("EPA"). On July 23, 2010, the Board directed New England Transrail ("NET") to file a status report, and NET did so on August 23, 2010, sending a copy to EPA. In this status report NET was asked to "discuss the status of EPA's site investigation" of the Olin Chemical Superfund Site ("site"), part of which NET has proposed to turn into a truck-to-rails transfer station.

Appended to NET's status report is an August 12, 2010 site investigation update provided by Olin Corporation (the owner of the site and the party performing the site investigation under EPA oversight). While this status update accurately describes the progress to date of EPA's site investigation, there are conclusions drawn which are premature and may not be supported by the facts as known to EPA. Specifically, it is stated in the appended status update (p.3) that, "Based on a qualitative review of the validated data collected from OU-1 in 2010, the constituents and concentrations detected are similar to previous sampling data. ... Based on this [qualitative] review, the previously completed NET Risk Assessment is still appropriate." These conclusions are then repeated or summarized in the main text of NET's status report.

EPA has received the digitized raw soil data collected by Olin Corporation in 2010, but has not received any written report or analysis of such data. It is EPA's understanding that Olin Corporation intends to provide a written report in the form of a work plan addendum to EPA on September 7, 2010. Based on Olin's verbal representation of the results, data gaps remain which require further characterization of certain soil areas.

But even once these data gaps have been filled, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," more commonly known as the "Superfund" law) requires additional work before EPA can issue remedial investigation and feasibility study ("RI/FS") reports. An EPA RI/FS contains the following primary components:

- characterization of the full nature and extent of contamination;
- quantitative human health risk assessment;
- quantitative ecological risk assessment;

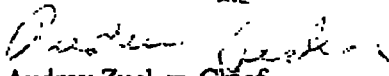
- remedial investigation report;
- determination of applicable and relevant or appropriate requirements ("ARARs");
- screening of remedial technologies (if required);
- detailed evaluation of remedial alternatives (if required); and
- feasibility study report.

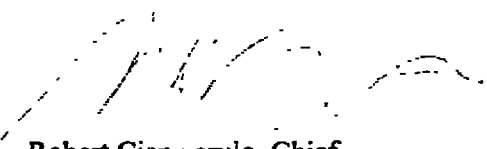
The conclusions drawn in NET's status report are premature because data gaps remain, quantitative risk assessments have yet to be performed, and other steps necessary to issue the required RI/FS reports are still pending. By law, EPA is required to publish draft RI/FS reports and subject these reports to public comment; only after EPA responds to public comment can it finalize the RI/FS reports. NET's proposal includes physical changes to the site that, if implemented now, could circumvent this statutory process. Based on the current pace of the site investigation activities, we expect to finalize RI/FS reports for the relevant part of the site in 2012. The current schedule, however, may continue to be modified as the investigation proceeds.

Based largely on the status update provided by Olin Corporation, NET goes on to request that the Board "complete its environmental review" (p.4). This request is contrary to the Board's prior ruling. In its July 10, 2007 decision in this matter, the Board stated that the Section of Environmental Analysis ("SEA") should not complete its environmental review until "the RI/FS is issued by EPA" (p.17). As detailed above, EPA has not issued an RI or FS report; in fact, the site investigation is still being performed (under EPA oversight) by Olin Corporation.

While EPA's understanding of conditions at the site has progressed, we are still in the site investigation phase of the RI/FS. EPA requests that the Board continue to defer environmental analysis until the relevant RI/FS reports have been issued and finalized through the public review and comment process described above. EPA also repeats its request (see EPA's letter of May 11, 2006) that at the appropriate time, SEA undertake an environmental impact statement rather than an environmental assessment, in light of the extensive excavations proposed and the known environmental issues at the site. Should the Board's environmental staff wish to discuss this matter, they should feel free to contact Jim DiLorenzo, EPA's remedial project manager for the Olin site (dilorenzo.jim@epa.gov or 617-918-1247).

Sincerely,


Audrey Zucker, Chief
Superfund Legal Office
Office of Environmental Stewardship


Robert Cianciarulo, Chief
Massachusetts Superfund Section
Office of Site Remediation and Restoration

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cc: **Phillis Johnson-Ball, Section of Environmental Analysis**
Kirk K. Van Tine, counsel to NET
Jim DiLorenzo, EPA
Wesley Kelman, EPA
Steve Morrow, Olin Corporation
Joseph Coyne, Massachusetts Department of Environmental Protection
William Pardee, Massachusetts Attorney General's Office

EXHIBIT B



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

**ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023**

VIA FIRST-CLASS MAIL

May 11, 2006

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Re: New England Transrail Petition, STB Finance Docket 34797

Dear Ms. Rutson:

We are writing in reply to your letter of April 7th. Your letter asked all interested parties for comments on (among other things) the "potential environmental impacts" of New England Transrail's proposal to build a truck-to-rails facility at the Olin Chemical Superfund site, as well as the "level of environmental analysis" that the Section of Environmental Analysis ("SEA") should use to review this proposal. The EPA Region I Superfund office and the EPA Region I National Environmental Policy Act ("NEPA") office jointly submit the following comments.

First, we would like to take the opportunity to provide an update on the Superfund process. On April 19th, EPA formally added the Olin Chemical site to the National Priorities List ("NPL"), completing a listing process that began last September. 71 Fed. Reg. 20,016, 20,018 (April 19, 2006). As indicated in our January 26, 2006 submission to the STB, the NPL is EPA's list of the country's most serious hazardous waste sites, and the inclusion of the Olin Chemical site on the NPL list ensures a detailed investigation and evaluation of human health and environmental risks under the Superfund program.

EPA is now in the process of preparing for negotiations related to this site with the potentially responsible parties ("PRPs"), including the Olin Corporation and others. In the next few weeks, EPA expects to begin to negotiate an administrative order on consent under which the PRPs would carry out the remedial investigation and feasibility study or "RI/FS" described in our earlier letter.¹ The PRPs' work on the RI/FS would be subject to EPA's supervision and to the many requirements of the consent order. When and if negotiations result in a signed order, the PRPs will begin work on the

¹ The RI determines the nature and extent of contamination at the site and assesses health and environmental risks; the FS develops different ways of cleaning up the site, if cleanup is necessary.

investigation.² Their first order of business will be to write a report for EPA on all the data that has already been collected at the site, so that we can identify any areas where additional data might be needed. We hope to work with the PRPs to get this study underway expeditiously.

Second, as we indicated in our January 26th submission, until the RI/FS is done, or until that part of the RI/FS dealing with the parcel to be developed is done, we cannot determine whether the site can be developed (a) safely, (b) in a manner that will not exacerbate existing site conditions, and (c) consistently with whatever remedial measures might be required under the Superfund program.

Finally, with respect to SEA's environmental review of the NET proposal, we are concerned that it may be very difficult to fully understand site conditions without an inquiry into the proposal's effect on potentially contaminated soil and groundwater. Since EPA is about to initiate such an inquiry in the form of an RI/FS, SEA may want to consider deferring its environmental review until the relevant portions of the RI/FS are complete.³ With respect to the question of what level of environmental analysis is appropriate, we strongly recommend that whenever SEA does choose to conduct its review, it prepare an Environmental Impact Statement ("EIS") rather than an Environmental Assessment ("EA"), in recognition of the known environmental issues at the site and the extensive excavations being proposed. An EIS would provide a more in-depth examination of project impacts and alternatives than an EA.

We appreciate your consideration of this letter, as well as our letter of January 26th, and hope that these submissions are useful to SEA. If you should have any questions, please contact our Remedial Project Manager for this site, Jim DiLorenzo, at (617) 918-1247, or Wesley Kelman of our Superfund legal staff at (617) 918-1540.

Respectfully submitted,



Tim Conway
Chief, Superfund Legal Office, EPA Region I

² If EPA and the PRPs cannot agree on a consent order, EPA will either carry out the RI/FS itself or issue a unilateral administrative order requiring the PRPs to do the RI/FS.

³ See, e.g., *Sierra Club v. Flowers*, ___ F. Supp. 2d ___, 2006 WL 760489, at *25-*27 (S.D. Fla. March 22, 2006) (Army Corps of Engineers' EIS was inadequate where it relied on future studies to be completed by local officials; "The Corps either should have waited for the County to complete its studies of wellfield protection, or the Corps should have done its own study."); *City of South Pasadena v. Slater*, 56 F. Supp. 2d 1106, 1133 (C.D. Cal. 1999) (where agency commissioned a broad supplemental EIS but then decided to approve the project's design before this supplemental EIS was completed, agency probably violated NEPA requirement that EIS process be completed "before the final decision is made"); *Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 782 (9th Cir. 1980) (EIS was inadequate where sources for facts supporting its conclusions were not readily obtainable; "the EIS must stand or fall on its own supporting documentation" and must give "decision makers . . . sufficient data from which to draw their own conclusions about air, noise, and water pollution").



Elizabeth A. Higgins
Director, Office of Environmental Review, EPA Region I

cc (via email): Phillis Johnson-Ball, SEA

J. Patrick Berry, attorney for NET

Daniel R. Deutsch, attorney for the Town of Wilmington

Siu Tip Lam, Massachusetts Attorney General's Office

David Buckley, Massachusetts Department of Environmental Protection

Rep. James R. Miceli

Stephen M. Richmond, attorney for the NSWMA

Laurie Burt, attorney for Olin Corp.

Curt Richards, Olin Corp.

Steve Morrow, Olin Corp.

Kathy Barry, Concerned Citizens Network of Wilmington

Linda A. Raymond, Woburn Neighborhood Association, Inc.